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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE PERSONAL WEB TECHNOLOGIES, LLC, ET AL., PATENT LITIGATION	**CASE NO.: 5:18-md-02834-BLF**
AMAZON.COM, INC. and AMAZON WEB SERVICES, INC., Plaintiffs, v. PERSONALWEB TECHNOLOGIES, LLC and LEVEL 3 COMMUNICATIONS, LLC, Defendants.	**Case No.: 5:18-cv-00767-BLF** **Case No.: 5:18-cv-05619-BLF** **PERSONALWEB TECHNOLOGIES, LLC'S SUPPLEMENTAL BRIEFING FOR HEARING ON THE DETERMINATION OF THE REASONABLENESS OF ATTORNEYS' FEES AND COSTS REQUESTED BY AMAZON.COM, INC., AMAZON WEB SERVICES, INC., AND TWITCH INTERACTIVE, INC. AGAINST PERSONALWEB TECHNOLOGIES, LLC**
PERSONALWEB TECHNOLOGIES, LLC and LEVEL 3 COMMUNICATIONS, LLC, Counterclaimants, v. AMAZON.COM, INC. and AMAZON WEB SERVICES, INC., Counterdefendants.	

PERSONALWEB TECHNOLOGIES, LLC, a Texas limited liability company, and LEVEL 3 COMMUNICATIONS, LLC, a Delaware limited liability company

Plaintiffs,

v.

TWITCH INTERACTIVE, INC. a Delaware corporation,

Defendant.

I. INTRODUCTION

Amazon.com, Inc., Amazon Web Services, Inc., and Twitch Interactive, Inc. (collectively, "Amazon") jointly seek $6,100,000.00 in fees for 12,783.2 hours of attorney time and $323,668.06 in non-taxable expenses. (Dkt. 592-7, 589.) While the Court found this case exceptional, it did not do so based on every ground advanced by Amazon in their attorneys' fee motion (Dkt. 593.) To the contrary, this Court found that seven arguments advanced by Amazon as purported examples of baseless claims and unreasonable conduct did not support a finding of an exceptional case. (Dkt. 636.)

Requests for attorney's fees pursuant to Section 285 are governed by the "but for" standard such that Amazon should only recover fees that "would not have been incurred in the absence of the sanctioned conduct." *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1187 (2017). The Court should reduce the fee request of Amazon as set forth herein and the Knapton Declaration to a maximum amount of $1,302,947.86 in fees and, if the Court allows expert and other non-taxable costs, $203,300.10 in costs.

II. THE MAJORITY OF THE REQUESTED FEES ARE UNREASONABLE AS THEY BEAR NO RELATION TO THE CLAIM AND CONDUCT FOUND EXCEPTIONAL

Amazon bear the burden of documenting appropriate hours expended in the litigation, including submission of supporting evidence. *Welch v. Metro. Life. Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007). Supreme Court "case law construing what is a 'reasonable' fee applies uniformly to all" federal fee shifting statutes that permit the award of reasonable fees. *City of Burlington v. Dague,* 505 U.S. 557, 562 (1992). Federal Circuit precedent controls the calculation of attorneys' fees in patent cases. *Bywaters v. United States*, 670 F.3d 1221, 1227–28 (Fed. Cir. 2012). This court in its discretion can decide both the amount of attorneys' fees as well as "[t]he methodology of assessing a reasonable award under § 285." *Mathis v. Spears*, 857 F.2d 749, 755 (Fed. Cir. 1988).

Significantly, requests for attorney's fees pursuant to Section § 285 are governed by the 'but for' standard. *Cave Consulting Grp., Inc. v. Truven Health Analytics, Inc.*, 293 F. Supp. 3d 1038, 1048-1049 (N.D. Cal. 2018) (finding "the 'but for' standard set forth in *Fox v. Vice*, 563 U.S. 826, 836 (2011) applies" to attorney's fees under Section § 285). "Under the 'but for' standard, '[t]he court's fundamental job is to determine whether a given legal fee...would or would not have been incurred in

the absence of the sanctioned conduct. The award is the sum total of the fees that, except for the misbehavior, would not have accrued.'" *Flowrider Surf, Ltd. v. Pac. Surf Designs, Inc.*, No. 315CV01879BENBLM, 2020 WL 5645331, at *5 (S.D. Cal. Sept. 22, 2020) quoting *Goodyear Tire & Rubber Co.*, 137 S. Ct. 1178, 1187 (2017). In *Goodyear*, the Supreme Court observed that it would be wrong for a trial court to grant fees for the "same work that would have been done (for example, the same depositions taken) to contest the *non*-frivolous claims in the suit." *Id.* "Hence the need for a court to establish a causal link between the litigant's misbehavior and legal fees paid by the opposing party." *Id.*

There are two means under this "but for" standard for determining the reasonableness of fees. First, the court may conduct an "hour-by-hour analysis of the fee request" and exclude hours for which it would be unreasonable to compensate the prevailing party. Second, "when faced with a massive fee application the district court has the authority to make across-the-board percentage cuts either in the number of hours claimed or in the final lodestar figure." *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202-03 (9th Cir. 2013).

As a result, the Court should only award Amazon those attorneys' fees necessary to compensate Amazon for the work it had to perform to address and oppose the specific areas this Court found supported a finding of exceptionality. *In re Rembrandt Techs., LP v. Comcast of Fla./Pa., LP*, 899 F.3d 1254, 1279 (Fed. Cir. 2018) (rejecting full fee award because no finding was made that the exceptional misconduct "so severely affected every stage of the litigation that a full award of attorney fees was proper.")

A. Fees Should Be Recovered Only for the Five Categories of Exceptional Behavior.

In its order, the Court did not find PersonalWeb engaged in such litigation misconduct that was "pervasive enough to infect the entire litigation." *Monolithic Power Systems, Inc. v. O2 Micro Intern, Ltd.*, 726 F.3d 1359, 1369. The Court found this case was exceptional based on five specifically enumerated grounds:

> This case is exceptional because (1) PersonalWeb's infringement claims related to Amazon S3 were objectively baseless and not reasonable when brought because they were barred due to a final judgment entered in the Texas Action; (2) PersonalWeb frequently changed its infringement positions to overcome the hurdle of the day; (3) PersonalWeb unnecessarily prolonged this litigation after claim

> construction foreclosed its infringement theories; (4) PersonalWeb's conduct and positions regarding the customer cases were unreasonable; and (5) PersonalWeb submitted declarations that it should have known were not accurate."

(Dkt 636, 33:2-3, 6-12.) These five grounds can be combined into three groups (with correlating parenthetical numbers): *First*, "S3 only" issues which include the S3 infringement claims and the declarations opposing the claim preclusion/*Kessler* SJ motion [grounds (1)/(5)]; *Second*, post claim-construction which includes prolonging the litigation after claim construction, and conduct regarding the customer cases [grounds (3)/(4)]; and *Third*, changed infringement positions [ground (2)].

The attorneys' fees related to these three groups can be segregated from the other fees. With this in mind, we address each of Amazon's 19 categories of fees, drawn from Dkt. 592-7. As an initial matter, Amazon represented that "Amazon receives certain fee discounts from Fenwick, and Amazon is only requesting fees that it incurred after applying these discounts" (Dkt. 592-1, 5:13-15), yet inexplicably the total amount of fees sought for each category is based on the effective rates for each Fenwick attorney *before* the final discount (Dkt. 592-7) so that PersonalWeb and the Court cannot rely on the purported total fee amount per category. (Knapton Decl., ¶9 to ¶11.) The correct final amount, after applying the discount and the adjusted sums for each category are used herein. (*Id*., ¶9; Ex. 3.)

1. **Case Management** (2143.3 hours: $1,079,001.52) - **Mostly Exclude.**

Amazon has provided no evidence that the vast majority of time spent on "Case Management" would not have otherwise been expended by Amazon since "S3 only" infringement was removed relatively early in the case (before most discovery and claim construction). No "Case Management" fees incurred after the Court's *Kessler* summary judgment order should be awarded, because from that point forward no aspect of the MDL cases focused on "S3 only". Further, most of the fees expended early in the case (*e.g.*, MDL and preliminary injunction) would have been incurred even if the "S3 only" infringement was removed, as infringement of the '544 patent was still at issue. Amazon fails to demonstrate which of these fees are attributable to "S3 only" aspects of the case, and in any event, any such fees would have been a miniscule aspect of "case management."

Although the time spent on the stayed customer cases was not broken out by Amazon, PersonalWeb alleged "S3 only" infringement against only seven defendants out of the 84 total stayed

cases. These seven cases were filed on September 12, 2018 after much of the pre-*Kessler* summary judgment order case management fees were already incurred. Thus, it is unlikely that these filings contributed to any significant attorneys' fees beyond those attributable to the other 77 defendants. Thus, Amazon should be entitled to no more than $269,750.38 in this category. (Knapton Decl. ¶41.)

2. Multidistrict Litigation (296.8 hours: $145,613.05) **– Exclude.**

Amazon should not receive fees here because the Court held that PersonalWeb's conduct to win centralization was not exceptional since PersonalWeb "did not hide the ball as to Ruby on Rails from the MDL Panel." (Dkt. 636, 16:21-22.) Equally important, the order nowhere implies that any aspect of centralization was inappropriate; to the contrary, that one set of orders could dispose of 84 complaints bespeaks the efficiency of centralization and the antithesis of "exceptionality."

3. Investigate/Respond to PersonalWeb's Claims (410.5 hours: $212,047.88)

Mostly Exclude. Out of the 84 complaints filed by PersonalWeb, only seven solely allege claims of S3 infringement and these were not filed until September 12, 2018. (Dkt. 96-1.) The other complaints contained S3 claims, but they also included claims alleging infringement of the '544 patent or alleged infringement with non-S3 servers. Thus, the majority of hours spent investigating and responding to PersonalWeb's complaints cannot be attributed to the "S3 only" claims, and because Amazon would have incurred most of the fees in this category even if PersonalWeb had not alleged its "S3 only" infringement claims, they should not be included. While Amazon's chart does not provide a breakdown of its investigation and response to the original versus amended complaints, a review of Amazon's invoices reveals Amazon spent 84.4 hours and $41,709.65 in fees investigating/responding to PersonalWeb's "S3 only" claims. (Knapton Decl. ¶ 42.) The Court should limit Amazon's fee award in this category to no more than $41,709.65. (Knapton Decl., ¶42.)

4. Declaratory Judgment Complaint (174.1 hours: $83,411,31) **- Partially Include.**

Amazon's DJ complaint sought a declaration of non-infringement partially based on the defense that PersonalWeb's S3 claims were barred by claim preclusion and *Kessler* (5:18-cv-00767 ("Amazon Case"), Dkt. 1). But even after the Court found that claim preclusion/*Kessler* applied to S3 only infringement claims, that did not fully dispose of Amazon's DJ complaint. Further, Amazon later acknowledged that claim preclusion/*Kessler* never applied to the '544 patent, which was included in

the DJ complaint. Although apportioning fees in this category between S3 only issues and the other issues raised in the DJ Action would be difficult, PersonalWeb suggests awarding Amazon one-half of the fees in this category, for an award of no more than $41,705.66. (Knapton Decl. ¶48.)

5. **PersonalWeb's Motion to Dismiss** (73.4 hours: $33,813.91) **– Include.**

6. **Motion to Stay** (340.4 hours: $151,668.62) **- Exclude.**

Amazon filed identical motions to stay on behalf of 28 of customer defendants. (*See e.g.* 5:18-cv-00176, Dkt. 19.) Amazon argued that the customer cases should be stayed, and the MDL proceedings ceased, so that Amazon's DJ action could be decided first. (*Id.* at 7.) Because the motions to stay sought to avoid consolidation in the MDL, and the Court held that PersonalWeb's MDL efforts were not unreasonable or baseless, Amazon should not recover its fees for its numerous, identical motions to stay. (Dkt. 636, 16:21-22.) *In re Rembrandt Techs.*, 899 F.3d at 1279-80; *Cave Consulting Grp.*, 293 F. Supp. 3d at 1048-1949; *Fox*, 563 U.S. at 836.

7. **Motion for Preliminary Injunction** (454.3 hours: $219,985.69) **- Exclude.**

In this motion, Amazon sought to enjoin PersonalWeb from prosecuting its suits against the customer defendants on the ground that "declaratory judgment actions brought by manufacturers must be resolved before duplicative customer suits." (Amazon Case, Dkt. 15-16.) As with the motions to stay, this motion was an attempt to supersede consolidation in the MDL. Indeed, the Court dismissed the motion *sua sponte* after the MDL was granted. (Amazon Case, Dkt. 69.)

8. **Summary Judgment on Claim Preclusion/Kessler** (1,050.3 hours: $592,831.33) **- Include.**

9. **Motion for Judgment on the Pleadings ("MJOP")** (263.9 hours: $147,464.68) **- Exclude.**

In its MJOP, Amazon argued PersonalWeb lacked standing to bring its CloudFront infringement claims due to PersonalWeb's contractual obligations with Level 3, and Amazon's contention that PersonalWeb's allegations against Amazon's CloudFront were exclusively in Level 3's Field of Use, and not PersonalWeb's. (Dkt. 413 at 4-6; Dkt. 541 at 13-14.) Because the Court denied the entire MJOP, Amazon should not be awarded any fees on its failed motion. (Dkt. 578, 25: 22-23, 26:15-19.) *Chamberlain Group, Inc. v. Techtronic Industries Co., Ltd.*, 315 F. Supp. 3d 977, 1020 (N.D. Ill. 2018) (declining to award fees for preliminary injunction motion lost on appeal); *Eli Lilly & Co. v. Zenith Goldline Pharm., Inc.*, 264 F. Supp. 2d 753, 771 (S.D. Ind. 2003).

10. Infringement Contentions (151.7 hours: $72,896.40) - **Exclude.**

PersonalWeb's infringement contentions as to S3 and CloudFront were very similar, except some functions performed by S3 were performed by CloudFront instead. As such, any fees Amazon expended analyzing PersonalWeb's infringement contentions relating to S3 applied equally to the S3/CloudFront combination that survived the claim preclusion summary judgment motion.

11. Invalidity Contentions (329.7 hours: $139,924.68) - **Exclude.**

Amazon never argued invalidity in any of their summary judgment motions, did not allege invalidity as an area that should weigh in favor of exceptionality in its Motion, (Dkt. 593) and invalidity was neither related to any specific customer defendant nor "S3 only" specific.

12. Damages Contentions (22.7 hours: $10,745.50) - **Exclude.**

Amazon restricted their damages contentions solely to CloudFront infringement. As the Court did not find PersonalWeb's CloudFront infringement claims were baseless, (Dkt. 636, 15:2-3;14:25-15:1), these fees should not be included as none were caused by claims found exceptional.

13. Claim Construction (953.9 hours: $520,714.93) - **Exclude.**

Amazon should not receive any of these fees because the Court did not find that the constructions advanced by PersonalWeb were baseless or presented in an unreasonable manner. (Dkt. 636, 14:13-22.) The Court held that PersonalWeb's proffered constructions were "not unreasonable" and the merit of PersonalWeb's infringement positions were "not clear until *after* this Court issued its Claim Construction Order." *Id.* (emphasis added).

14. Fact Discovery (2,753.4 hours: $1,331,489.17) - **Mostly Exclude.**

After the March 13, 2019 order granting in part Amazon's motion for summary judgment on claim preclusion/*Kessler*, fact discovery did not relate to S3, and instead was limited to PersonalWeb's other "reasonable infringement arguments." (*Id.*, 14:25-15:3.) Thus, while fees sought in this category from the beginning of the case through March 13, 2019 could be awarded to Amazon, all fees in this category after March 13, 2019 should be denied. Amazon would be entitled to no more than $332,872.29 in this category. (Knapton Decl. ¶¶ 44, 48.) This amount should be reduced further due to unreasonable billing practices discussed below.

15. Discovery Disputes/Motions to Compel (554.3 hours: $307,874.85) - **Mostly Exclude.**

The fees in this category should be handled the same as those in the Fact Discovery category—fees from the beginning of the case through March 13, 2019 may be included, but fees in this category after March 13, 2019 should be excluded, resulting in an award to Amazon of no more than $76,969.71 in this category. (Knapton Decl. ¶ 45.) This amount should be reduced further by 21% to 25% due to unreasonable billing practices discussed below (*See* section III below.)

16. Expert Discovery (1,593.1 hours: $687,311.13) - **Partially Include.**

The Court found that it was "improper for Mr. de la Iglesia to 'interpret' the Court's construction and apply his 'interpretation' to the infringement analysis." (Dkt. 636, 21:6-7.) As such, Amazon may be entitled to certain attorneys' fees incurred relating to Mr. de la Iglesia's expert report and more specifically, to those fees incurred rebutting Mr. de la Iglesia's report. Thus, as a threshold issue, only fees in this category incurred after August 23, 2019, when Mr. de la Iglesia's report was served, should be considered. Further, because Amazon redacted information from their invoices (*see e.g.,* Dkt. 592-5 at p. 474, 510, 513) regarding fees incurred for certain experts, it is impossible to ascertain which expert that work product pertains to. Amazon should not be awarded fees for work done researching and investigating the qualifications of their own experts, preparing their declarations and reports, or analyzing the reports of PersonalWeb's other experts and rebutting their contents; instead, they should only receive fees relating to the preparation and creation of their rebuttal report to Mr. de la Iglesia's report.

Additionally, while attorney time spent in this category associated with responding to Mr. de la Iglesia's report is compensable, expert fees are only allowable if there is "fraud on the court or abuse of judicial process" which the Court did not find occurred here. *Amsted Ind. v. Buckeye Steel Castings Co.*, 23 F.3d 374, 379 (Fed. Cir. 1994); *see also Straight Path IP Grp., Inc. v. Cisco Sys., Inc.*, No. C 16-03463 WHA, 2020 WL 5522993 *2 (N.D. Cal. Mar. 4, 2020), report and recommendation adopted, No. C 16-03463 WHA, 2020 WL 2539002 (N.D. Cal. May 19, 2020). ("The Federal Circuit has read this language to exclude expert costs.") In *Amsted Industries,* the court held that "an award under section 285 encompasses only attorney's fees; expert witness fees fall under 28 U.S.C. § 1920, subject to the 28 U.S.C. § 1821(b) limitation." *Amsted Ind.*, 23 F.3d at 377. Thus, Amazon cannot recover expert costs here so any costs in this category must be excluded.

The Court should only award fees and costs incurred after Mr. de la Iglesia's August 23, 2019 report and which relate to investigating and rebutting his report, excluding any expert witness fees resulting in an award of no greater than $102,275.85 in fees and $203,300.10 in costs. (Knapton Decl. ¶¶ 46, 56.)

17. Summary Judgment for Non-Infringement (370.1 hours: $213,777.16) **- Partially include.**

Amazon should not be granted any fees associated with the new grounds of non-infringement as the Court recognized that Amazon "sought a finding of non-infringement as to all the grounds raised in their motions" so that "the prolongation of the case at that stage did not rest solely on PersonalWeb's shoulders." (Dkt. 636, 22:10-17.) Since "[t]he fees associated with those independent grounds cannot fairly be attributed to PersonalWeb's conduct," (*Id.*, 23:2-4) the fee award should be no more than $160,332.87. (Knapton Decl. ¶47.)

18. PersonalWeb's Rule 54(b) Motion (25.8 hours: $13,705.99) **– Exclude.**

PersonalWeb offered to have judgment entered against it, but Amazon declined because it wanted to obtain judgment of non-infringement on additional grounds. PersonalWeb should not have to reimburse Amazon for its fees incurred in doing so, since "[t]he fees associated with those independent grounds cannot fairly be attributed to PersonalWeb's conduct." (Dkt. 636, 23:3-5.)

19. Federal Circuit Appeal (271.1 hours: $135,720.79) **- Exclude/Postpone.**

This appeal is still pending as PersonalWeb's petition for an *en banc* review remains pending. (Case No 19-1918, Dkt. 125.) Determination of fees for this category should be postponed until the appeal has concluded. As is consistent with the approach this Court has previously taken regarding appellate fees sought for appeals not yet finalized, the Court should not award Amazon fees related to the appeal. *See Phigenix, Inc. v. Genentech Inc*., No. 15-CV-01238-BLF, 2019 WL 2579260, at *18 (declining to award appellate fees because it was possible Phigenix would win on appeal, abrogating Genentech's status as the prevailing party).

III. DUE TO UNREASONABLE BILLING, A 50% to 75% CUT TO THE FEES AND COSTS FOR CASE MANAGEMENT AND FACT DISCOVERY IS WARRANTED.

Within the five categories found to be exceptional, Amazon seeks an unreasonable amount of attorneys' fees and costs to train mid-level and junior attorneys, multiple attorneys' attendance at

depositions, the attendance of numerous attorneys at the same internal meetings, and discovery work performed by partners that could have been performed by associates. (Knapton Decl., at ¶ 49.) This Court should exclude hours that are excessive, redundant, or unnecessary. *Hensley v. Eckerhart*, 461 U.S. 424, 433-34; 437 & n.12 (1983). In analyzing the fee request, "[t]he Court cannot 'uncritically' accept the representations of hours expended; rather, the Court must assess their reasonableness." *Gonzales v. City of San Jose*, No. 13-cv-00695-BLF, 2016 WL 3011791, at *5 (N.D. Cal. May 26, 2016) (*citing Sealy, Inc. v. Easy Living, Inc*., 743 F.2d 1378, 1385 (9th Cir. 1984)).

Top-heavy billing: Amazon's Fact Discovery category shows an unreasonable division of labor between senior- and junior-level attorneys. (Knapton Decl., ¶52.); *Bridgeport Music, Inc. v. Rhyme Syndicate Music*, 376 F.3d 615, 627 (6th Cir. 2004) (reducing lodestar amount by 25% "to account for 'top-heavy' billing by partners for work that could have been performed by associates"); *Hernandez v. Taqueria El Grullense*, No. 12-cv-03257-WHO, 2014 WL 2611214, at *2-3 (N.D. Cal. June 11, 2014). The court should thus reduce the total $223,510.68 in fees attributed to Fact Discovery work performed by partners Melanie Mayer and Saina Shamilov by 50% from $223,510.68 to $111,755.34 for the two of them. (Knapton Decl., ¶52.)

Overstaffing: Amazon seeks $1,331,489.17 spent for four partners and more than eight associates to take and defend depositions together, a number derived from Amazon's general "Fact Discovery" category. (Knapton Decl., ¶44.) This amount of hours is excessive and duplicative for overstaffing. Specifically, it is excessive to have two (or more) attorneys attend the same deposition where only one attorney was handling the deposition. *Rosenfeld v. U.S. Dep't of Justice*, 903 F. Supp. 2d 859, 879 (N.D. Cal. 2012) The Court may reduce the fee amount if the fee request shows unnecessary duplication of effort. *Chang v. County of Santa Clara*, No. 5:15-cv-02502-RMW, 2016 WL 6162460, at *9 (N.D. Cal. Oct. 24, 2016). As such, the Court should reduce the fees requested for Depositions by 75%, to account for excessive, duplicative, or irrelevant time. Amazon should be entitled to no more than $332,872.29 for Fact Discovery. (Knapton Decl. ¶44.)

***Numerous attorneys at the same meetings*:** Amazon's invoices reveal that they seek $1,441,880.00 for 1,860.3 hours spent on internal meetings, notes and calls. (Knapton Decl. ¶38.) Amazon's own bills demonstrate that each attorney on the reduced team—a total of 16 timekeepers

billed for his/her attendance at conferences, even though "good billing judgment" says you should not bill for every attorney present on calls and meetings. *Phigenix, Inc.* 2019 WL 2579260, at *16 citing *Our Children's Earth Found. v. U.S. Envtl. Prot. Agency*, No. 13-CV-02857-JSW, 2016 WL 1165214, at *9 (N.D. Cal. Mar. 25, 2016) (reducing requested fees by 25% for internal conferences); *S. Yuba River Citizens League & Friends of River v. Nat'l Marine Fisheries Serv.*, No. CIV. S-06-2845-LKK, 2012 WL 1038131, at *5 (E.D. Cal. Mar. 27, 2012), *aff'd* 581 F. App'x 693 (9th Cir. 2014) (reducing request by 20% in part because each attorney present billed for internal conferences). Indeed, on the days marked with a "T" in Knapton's Exhibit 2, Amazon billed for attendance of up to 17 timekeepers on conference calls and meetings. Where, as here, Amazon's counsel billed a copious amount of hours for the attendance by numerous attorneys for the same conferences, a reduction is justified. *Arnold v. Pfizer, Inc.*, No. 3:10-cv-01025-AC, 2015 WL 4603326, at *8 (D. Or. July 29, 2015) (reducing fees for duplicated efforts in conferencing). Since Amazon's requested hours for meetings/calls is unreasonably duplicative, the Court should apply a 75% reduction so Amazon would be entitled to no more than $269,750.38 for Case Management. (Knapton Decl. ¶ 41.)

IV. No Fees Should be Granted for the Motion for Attorney Fees and Costs.

Amazon also request the Court award them the approximate $450,000 in fees they claim they incurred between March 2020 and June 24, 2020 (Dkt. 592-1, ¶ 21). The Court should exclude this entire amount for two reasons. First, "fees on fees are deemed 'excludable'" and "no award of fees is 'automatic.'" *Therasense, Inc. v. Becton, Dickinson & Co.*, 745 F.3d 513, 518 (Fed. Cir. 2014) (quoting *Thompson v. Gomez*, 45 F.3d 1365, 1368 (9th Cir. 1995). Granting fees for work spent to prepare a motion seeking fees is excessive as it only serves to punish PersonalWeb twice. Second, Amazon have not submitted proof to substantiate the actual amounts incurred.

V. CONCLUSION

Based on the foregoing, PersonalWeb respectfully requests the Court only grant Amazon fees for work relating to the five categories that led the Court to find this case exceptional, and within those categories, only for work that was reasonably billed, for a total attorneys' fee award not to exceed $1,302,947.86 and for costs not to exceed $203,300.10. (Knapton Decl. ¶¶ 55-56.)

Dated: October 30, 2020

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